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LEGAL UPDATE 2000

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These case summaries of the 1999-2000 United States and Kentucky Supreme Court Sessions are written by legal staff for the purpose of brevity and easy reference. Should you need detailed information about the decisions, refer to the particular court case. If you have any comments about the form or substance of these materials, please call the Legal Section, at (859) 622-3801.

Please share this with all officers and other interested persons in your agency.

ILLINOIS V. WARDLOW, 120 U.S. 673 (2000)

FACTS: Upon seeing a caravan of police officers entering the neighborhood, an area known for heavy drug trafficking, Wardlow fled on foot. He was carrying an opaque package. Officers caught up with him and seized him. They executed a pat-down search of Wardlow, and the package. Feeling a hard, heavy object in the shape of a handgun inside the package, they opened it to find a .38 revolver.

ISSUE: Is simply fleeing from the police, under similar circumstances, sufficient to perform a Terry stop?

HOLDING: Yes

DISCUSSION: Under Terry, a stop is justified if the officer has a "reasonable, articulable suspicion that criminal activity is afoot…." In this case, Wardlow's presence in a high crime area combined with his sudden flight upon seeing police officer was sufficient to meet the standard.

The Court held that "[w]hile "reasonable suspicion" is less demanding than probable cause, there must be at least a minimal level of objective justification for the stop." This case also serves to define how "reasonable suspicion" relates to probable cause, specifically pointing out that it is less than a preponderance of evidence.

The Court made the point that unprovoked flight is not "going about one's business," that it is, in fact, "just the opposite." Allowing officers confronted with such flight to stop the fugitive and investigate further is quite consistent with the individual's right to go about his business or stay put and remain silent in the face of police questioning.

Shawn M. Herron, J.D.

FLORIDA V. J.L., 120 U.S. 1375 (2000)

FACTS: Miami-Dade officers received an anonymous tip that a young black male was standing at a particular bus stop, wearing a plaid shirt, and that he was in possession of a gun. A few minutes later, officers found J.L., along with two other young men, wearing a

plaid shirt, at that location. The officers observed no suspicious conduct, nor did they see anything to lead them to suspect that J.L. had a weapon. They seized and frisked J.L., and found a firearm.

ISSUE: Can an anonymous tip alone, with no other corroborating information, give reasonable suspicion to frisk for a gun?

HOLDING: No

DISCUSSION: The Court held that an anonymous tip that is unsupported by specific information about a firearm is not sufficient to satisfy the requirement of Terry that an officer have reasonable suspicion before initiating a frisk for a deadly weapon. In this case, the officers had nothing but an anonymous tip about an individual carrying a firearm. An exception strictly because a firearm is alleged would subject individuals to the potential for harassment by officers acting solely on anonymous tips that may, or may not, be credible. The Court insists on at least an indicia of reliability and credibility in anonymous tips.

The Court specifically stated that this case does not reach to areas where an individual has a diminished expectation of privacy, such as airports and schools.

Shawn M. Herron, J.D.

DICKERSON V. U.S., 120 S. Ct. 2326 (2000)

FACTS: Dickerson was indicted for bank robbery, conspiracy to commit bank robbery and using a firearm in the course of committing a crime of violence. Before trial, Dickerson moved to suppress a statement he had made at a FBI field office on the grounds that he had not received Miranda warnings before being interrogated. The appellate court reversed the lower court order suppressing the statement. While the court agreed that Dickerson had not received Miranda warnings before making his statement, it held that Section 3501 of the U.S. Code makes the admissibility of statements such as Dickerson's depend upon
whether they were made voluntarily was satisfied in this case. The Court concluded that the United States Supreme Court's decision in Miranda was not a constitutional holding; therefore, Congress could by statute have the final say on the question of admissibility.

ISSUE: In cases where a defendant has made a statement without Miranda warnings, does Section 3501 of the U.S. Code's "totality of the circumstances" test as to the voluntariness of the statement permit the statement's admission into evidence if the federal trial court makes such a finding?

HOLDING: No

DISCUSSION: Congress did not have the constitutional authority to enact Section 3501 of the U.S. Code, passed two years after the United States Supreme Court's decision in Miranda v. Arizona. The effect of Section 3501 was to overrule Miranda and apply a "totality of the circumstances" test in which the federal trial judge determines whether a statement was made voluntarily without regard to any warning requirement. Congress has no authority, by legislation, to override United States Supreme Court's decisions that interpret and apply the Constitution. The decision in Miranda announced a constitutional rule that may not be superceded by Congressional legislation that modifies the decision. The Court specifically declined to overrule Miranda.

BOND V. UNITED STATES, 120 S.Ct. 1462 (2000)

FACTS: Steven Dewayne Bond was traveling on a bus from California to Little Rock, Arkansas. The bus stopped at a Border Patrol checkpoint in Sierra Blanca, Texas, where a Border Patrol agent boarded the bus to check the immigration status of the passengers. After completing the check, the agent walked forward from the back of the bus, squeezing all of the soft luggage that the passengers had placed in the overhead compartments. He squeezed a bag belonging to Bond that was in the compartment over Bond's head. When the agent squeezed the bag, he felt a solid brick-like object. Bond admitted the bag was his and gave consent to the agent to open it. The agent discovered a brick of methamphetamine, and arrested Bond. Bond's motion to suppress the drugs as fruit of an illegal search was denied, and he was convicted of possession with intent to distribute methamphetamine. The Fifth Circuit Court of Appeals upheld the conviction, finding that the manipulation of the bag was not a search within the meaning of the Fourth Amendment.

ISSUE: Is the squeezing of soft-sided luggage a "search?"

HOLDING: Yes

DISCUSSION: The U. S. Supreme Court reversed the Court of Appeals, holding that the agent's manipulation of the carry on bag violated the Fourth Amendment prohibition against unreasonable searches. The Court rejected the government's argument that by placing his bag in the passenger compartment, and thus exposing it to the public, Bond did not have a reasonable expectation of privacy that his bag would not be physically manipulated. After all, it would not be unusual for such a bag to be touched and moved by other passengers while traveling. The Court distinguished this case from California v. Ciraolo, 476 U. S. 207, 106 S. Ct. 1809 (1986), and Florida v. Riley, 488 U.S. 445, 109 S.Ct. 693 (1989), which the government had cited as justification. In Ciraolo and Riley, the Court had held that matters open to public observation are not protected. The Court distinguished those cases by noting that they had involved only visual observation, not tactile observation of an opaque bag by manipulating it. The Court noted that while carry on bags are not part of the person, a traveler uses them to transport personal items that they wish to keep with them.

Further, the Court stated that while a traveler certainly has to expect that a carry on bag might be handled or moved by other passengers or employees of the carrier, the traveler does not have an expectation that they will "feel the bag in an exploratory manner". Therefore, the physical manipulation of the bag violated the Fourth Amendment.

Michael S. Schwendeman, J.D.

FLIPPO V. WEST VIRGINIA, 120 S.Ct. 7 (1999)

FACTS: Flippo and his wife were vacationing at a cabin in a state park. One night he called 911 to report that they had been attacked, and the police arrived to find Flippo waiting outside the cabin, with injuries to his head and legs. After questioning him, an officer entered the building and found the body of Flippo's wife, with fatal head wounds. The officers closed off the area, took Flippo to the hospital, and

Susan Smith Horne, J.D.

searched the exterior and environs of the cabin for footprints or signs of forced entry. When a police photographer arrived at about 5:30 a.m., the officers reentered the building and proceeded to "process the crime scene." For over 16 hours, they took photographs, collected evidence, and searched through the contents of the cabin. At the crime scene, the investigating officers found on a table, among other things, a briefcase, which they, in the ordinary course of investigating a homicide, opened, wherein they found and seized various photographs and negatives. The photographs included several taken of a man (later identified as a friend of Flippo and a member of the congregation where Flippo was the minister) who appears to be taking off his jeans. The prosecutor introduced the photographs as evidence of Flippo's relationship with the man and argued that the wife's displeasure with this relationship was one of the reasons that motivated Flippo to kill her.

Flippo was indicted for his wife's murder and moved to suppress the photographs and negatives discovered in an envelope in the closed briefcase during the search. He argued that the police had obtained no warrant, and that no exception to the warrant requirement justified the search and seizure. The trial court denied the motion to suppress, approving the search as one of a "homicide crime scene." The West Virginia Supreme Court of Appeals denied discretionary review and Flippo appealed to the United States Supreme Court.

ISSUE: Is there a crime scene exception to the warrant requirement?

HOLDING: No

DISCUSSION: In an unanimous opinion the U. S. Supreme Court reversed the lower courts for further proceedings, stating: "A warrantless search by the police is invalid unless it falls within one of the narrow and well-delineated exceptions to the warrant requirements. . . . The position of the trial court squarely conflicted with Mincey v. Arizona, 98 S.Ct. 2408 (1978), where we rejected the contention that there is a 'murder scene exception' to the Warrant Clause of the Fourth Amendment. We noted that police may make warrantless entries onto premises if they reasonably believe a person is in need of immediate aid and may make prompt warrantless searches of a homicide scene for possible other victims or a killer on the premises, . . . but we rejected any general 'murder scene exception' as "inconsistent with the Fourth and Fourteenth Amendments . . . ." The Court expressed no opinion on whether the search might be justified as consensual or the applicability of any other exception to the warrant rule.

Kenneth P. Alexander, J.D.

U.S. V. DICE, 200 F.3d 978, (C.A.6 (Ohio) 2000)

FACTS: A confidential informant told Police that Dice's residence was using a large amount of electricity. The informant further advised that Dice was conducting an indoor marijuana cultivation operation. Further investigation led to the issuance of a search warrant. The warrant was served which revealed a marijuana cultivation operation and more than 1,900 marijuana plants, as well as grow lights, other gardening, plumbing and electrical equipment used for indoor cultivation of marijuana, and fertilizer.

Dice sought to suppress the evidence, stating that the entry to the house did not comply with

the knock and announce requirement under the Fourth Amendment. Disputed testimony regarding the method of entry was introduced at trial. The officers testified that as they approached the residence they announced that they were deputy sheriffs and that they had a search warrant. Another officer then knocked on the door, waited "a few" seconds, and on hearing movement in the house, forced the door open. Dice testified that he was in the kitchen when the officers arrived outside of his house, and had begun to walk into the living room when they entered. He stated that he heard neither an announcement nor a knock at the door; rather, he simply heard his dogs barking loudly, followed by the officers crashing through the door.

The entry team had no information indicating that Dice was armed or dangerous, and also had no information that anyone in the home was at risk of harm. Officers also acknowledged that they had not been refused entry into the home. After knocking down the door, a number of officers entered the residence to execute the search warrant.

ISSUE: Is the entry after announcing, knocking, and waiting a few seconds before entry acceptable under the Fourth Amendment?

HOLDING: No.

DISCUSSION: Based on the officers' testimony that they only waited a "few" seconds after knocking before violently entering the house, the trial court found that the officers had not provided a reasonable opportunity for Dice to respond to their knock and announcement. On appeal to the U.S. Sixth Circuit Court of Appeals, the Court, citing Wilson v. Arkansas, 514 U.S. 927 (1995), held that, absent certain exigent circumstances, it is unreasonable under the Fourth Amendment for an officer to enter a dwelling without first knocking and announcing his presence and authority.

An integral part of the knock-and-announce rule is the requirement that officers wait a "reasonable" period of time after a knock before physically forcing their way into a residence. This gives the private resident the opportunity to allow them into the residence. Cases in which officers make a forced entry seconds after announcing their authority and purpose will be carefully scrutinized to determine whether there is compliance with the announcement requirements.

Bobby E. Ricks, J.D.

COMMONWEALTH V. MINIX, 3 S.W.3d 721 (Ky. 1999)

FACTS: A Paintsville City Police Officer stopped Minix for running a stop sign. The officer suspected that Minix was under the influence of alcohol and requested that he perform several field sobriety tests. In addition, the officer made two attempts to administer a preliminary breath test (PBT); however, the instrument failed both times. Based upon the officer's observation of Minix's performance of the sobriety tests, the obvious odor of alcohol and Minix's erratic driving behavior, Minix was arrested for driving under the influence (DUI) and taken to the Johnson County Detention Center. After arriving at the center, Minix refused three times to submit to a breath test using the Intoxilizer 5000 machine. Instead, Minix requested that he be taken to the local hospital for a blood test. Since he had declined to take the breath test, the officer refused to transport Minix to the hospital.

Minix was charged with DUI second offense, disregarding a stop sign, and disorderly conduct. Minix pled guilty to the disregarding a stop sign and disorderly conduct charges, but moved the Johnson District Court to suppress all evidence of his intoxication because of the officer's refusal to honor his request for a blood test. Minix also moved to dismiss the DUI charge on the grounds that there was insufficient evidence of his guilt. The district court granted both motions. The Johnson Circuit Court affirmed the dismissal, stating that under KRS 189A.103(7), Minix "was entitled to a test of his own choosing and the officer could not refuse the driver his right to the test once the driver [had] submitted to the preliminary breath test." The Court of Appeals affirmed the circuit court's judgment regarding Minix's right to his own test, but vacated and remanded that part of the judgment which suppressed all other evidence of Minix's intoxication and dismissed the charge.

ISSUE: Does the taking of a PBT satisfy the requirement for a breath test?

HOLDING: No

DISCUSSION: The Kentucky Supreme Court reversed and remanded the case for trial. KRS 189A.103(1) requires an individual to comply with an officer's request not only in the field following the initial stop, but also the officer's request to administer a post-arrest test utilizing the Intoxilizer 5000 breath machine. Only after an individual has complied is he or she entitled to an independent test. The language of KRS 189A.103(7) requires that the individual submit to a valid first test before the right to an independent test arises. The purpose of allowing an accused an independent test is to obtain another result to compare with or controvert the police officer's test. If there is no determination of alcohol concentration from a successful post-arrest test, there is no statutory entitlement to an independent test.

NOTE: This case was decided under the law in existence before October 1, 2000. The changes to the law that became effective on that date should not affect the results, but should in fact reinforce this decision.

Kenneth P. Alexander, J. D.

BAKER V. COMMONWEALTH, 5 S.W.3d 142 (Ky. 1999)

FACTS: Two Lexington officers were patrolling an area known to be associated with drug and prostitution activity. Baker was standing on a corner, with a known prostitute, conversing. The officers told the prostitute to move along, and both she and Baker did so. A few minutes later, the officers found the two back at the same location. One of the officers approached the two. Baker was wearing baggy pants and had his hands in his pockets, although the officer agreed that Baker did nothing threatening.

However, because it was late at night, and because of the nature of Baker's clothing, the officer asked Baker to take his hands from his pockets. When Baker did not submit to this request, the officer ordered him to do so. As Baker removed his hands, he tossed a crack pipe and a packet of crack cocaine to the ground. He was charged with possession of cocaine and drug paraphernalia.

ISSUE: Was it an unlawful seizure to order Baker to remove his hands from his pockets?

HOLDING: No

DISCUSSION: The Court agreed with the lower court decisions that held that it was reasonable for the officer to be concerned for his safety, and to make that order. The Court agreed that the order was a seizure, in that a reasonable person may not feel they were free to leave once such an order had been given. However, the Court stated that a further decision was necessary in this case, the decision as to whether that seizure was reasonable under the circumstances. The Court determined that, given the totality of the circumstances, that it was appropriate and reasonable to make that order, in that the intrusion upon Baker was minimal and overridden by the legitimate concern for safety.

Shawn M. Herron, J.D.

BRIMMER V. COMMONWEALTH, Ky. App., 6 S.W.3d 858 (1999)

FACTS: Brimmer and others were arrested while attempting to sell marijuana to a Nicholasville police informant. The incident took place near the ABC Learning Tree Montessori School (ABC). Brimmer was indicted for trafficking in a controlled substance within 1,000 yards of a school. A hearing was held by Jessamine Circuit Court as to whether ABC was a school for the purposes of KRS 218A.1411. The Court ruled that it was a school building used primarily for classroom instruction, and that ABC was therefore a school for the purposes of KRS 218A.1411. Brimmer entered a conditional guilty plea and appealed the ruling.

On appeal, he argued that ABC was merely a daycare business that markets itself as a Montessori school and that the building is not used primarily for classroom instruction.

ISSUE: Is a Montessori school a "school" for drug trafficking purposes?

HOLDING: Yes

DISCUSSION: The Kentucky Court of Appeals upheld the ruling by the Circuit Court that ABC was a school for the purposes of KRS 218A.1411. The Court noted cases from other jurisdictions that held that Montessori schools were schools for the purposes of statutes that restricted activities, such as the sale of beer, within a given radius of a school. Those courts had noted that Montessori schools were not mere nurseries, but that attending students were taught by state certified teachers using state certified lesson plans. The Brimmer Court held that "ABC clearly fell within the term 'school' or 'school building' contained in KRS 218A.1411." The Court based its ruling on the evidence that the primary purpose of ABC was educational instruction of children. The fact that younger children were not given as much instruction as older children was not significant as that is the typical pattern in an ordinary public school as well.

Michael S. Schwendeman, J.D.